

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GILBERT GUZMAN,) No. C 06-5241 JSW (PR)
Petitioner,)
vs.)
M. S. EVANS, Warden,) **ORDER TO SHOW CAUSE**
Respondent.) (Docket Nos. 3, 5, 7, 8)

INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at Salinas Valley State Prison in Soledad, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutional validity of his state conviction. Petitioner has also filed a motion to proceed *in forma pauperis*, which is now GRANTED (docket no. 3). This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner was convicted after trial in Santa Clara County Superior Court of murder in the first degree and sentenced to life in prison without the possibility of parole. Petitioner appealed his conviction to the California Court of Appeal in 2005. The Supreme Court of California denied Petitioner's petition for review in 2005. Petitioner filed this federal habeas petition on August 25, 2006.

DISCUSSION

I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

II Legal Claims

The petition raises the following grounds for relief: (1) insufficient evidence supports Petitioner's conviction; (2) the trial court's admission of former testimony of a witness violated Petitioner's confrontation rights; (3) Petitioner's due process rights were violated by the admission of prejudicial hearsay; (4) prosecutorial misconduct; (5) the trial court's failure to provide an accomplice instruction violated Petitioner's rights to due process and a fair trial; and (6) ineffective assistance of trial counsel. Liberally construed, it does not appear from the face of the petition that Petitioner is not entitled to relief. Accordingly, Respondent is ordered to respond to the petition as set forth below.

III Petitioner's Motions Seeking Expansion of Record and Discovery

Petitioner has filed certain motions seeking expansion of the record, production of documents and discovery and leave to conduct discovery (docket nos. 5, 7, 8). However, the petition has not yet been served on Respondent. As such, Respondent is directed to respond to Petitioner's motions when Respondent files an answer to the petition (docket nos. 5, 7, 8).

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General

1 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
3 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
4 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
5 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
6 portions of the state trial record that have been transcribed previously and that are relevant
7 to a determination of the issues presented by the petition. If Petitioner wishes to respond
8 to the answer, he shall do so by filing a traverse with the Court and serving it on
9 Respondent within **thirty (30)** days of his receipt of the answer.

10 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
11 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
12 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
13 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
14 days of receipt of the motion, and Respondent shall file with the Court and serve on
15 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

16 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
17 the Court informed of any change of address by filing a separate paper captioned "Notice
18 of Change of Address." He must comply with the Court's orders in a timely fashion.
19 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
20 to Federal Rule of Civil Procedure 41(b)

21
22 IT IS SO ORDERED.

23
24 DATED: 02/09/07


JEFFREY S. WHITE
United States District Judge